a man's action without trial because it meant depriving him of his right to come to the King's Courts. To this there is a short answer. The delay of justice is a denial of justice. Lately, men have often protested at the law's delay and counted it as a grievous wrong. It is, therefore, the duty of the court to put right this wrong.

Application allowed.

Solicitors: *RR Chelliah Brothers*; *Karpal Singh & Co.*

Reported by *PS Ranjan*

Stephen Chang Holding Sdn Bhd v Goh & Associates

HIGH COURT (JOHORE BAHRU) - ORIGINATING SUMMONS NO 31-875 OF 1988
SHANKAR J
2 JULY 1989

Legal Profession - Retainer of solicitor - Terms - Proof of retainer - Onus of proof - Costs - Whether retainer an entire contract - Quantum meruit - Conduct of solicitor - Change of solicitor - Withdrawal of solicitor - Powers of court - Legal Profession Act 1976, ss 116, 120, 121, 124 & 126

The defendants, a firm of advocates and solicitors owned by one Irene Goh, sent to the plaintiffs bills for costs and disbursements. The plaintiffs refused to pay the bills and sought an order from the court to declare that they were under no legal liability to do so. In 1987, the plaintiffs had engaged Mr Lee Bian Tian, the sole proprietor of Lee & Cheah, a firm of advocates and solicitors in Johore Bahru, to act for them in legal disputes in which they were involved. By the end of the year, Mr Lee decided to stop practising in Johore Bahru and tried to transfer his pending responsibilities to other solicitors. The plaintiffs did not appoint a new solicitor and finally Mr Lee wrote to the controlling shareholder of the plaintiffs, one Mr Chang, saying that he had passed one of the plaintiffs' pending matters to his 'associates, namely, M/s Goh and M/s TH Lim & Co'. In the letter, he also stated his intention to pass the other pending matters to his associates. Mr Chang said that he had been pressured into accepting the defendants' services and that he agreed only on condition that Mr Lee would continue to be responsible for the conduct of all the matters and would oversee the action of the defendants. He said that Mr Lee agreed to do that. Neither Mr Lee nor the defendants prepared any documents, to which Mr Chang, his wife (who was a plaintiff in one of the pending matters) or the plaintiffs were party, in which the terms of the take-over was set out. Both Mr Chang and Mr Lee said the understanding was that the matters would be billed when the work was completed. Eventually the defendants discharged themselves and demanded payment of their bills.

Held, granting the declaration sought by the defendants:

(1) In the absence of written evidence of the actual terms on which the take-over was stated, the court was compelled by authority to give greater regard to the testimony of Mr Chang than to that of either Mr Lee or Miss Irene Goh on this aspect of the matter. Mr Chang must have been given some assurances that the guiding hand of the only solicitor whom he trusted, namely, Mr Lee and had already paid $5,000 to, would prevail in the safe conduct of the pending matters towards their successful resolution.

(2) As the understanding was that the matters would be billed when the work was completed (in other words, that each of the matters was an entire contract), it was only on completion of the business that the solicitor was entitled to be remunerated.

(3) As Miss Goh was not retained by the client but by Mr Lee, it was to him that she must look for her remuneration, if she was entitled to any at all. In any case, the fact remained that these matters were never finalized either by Mr Lee or by Miss Goh, each for reasons of their own. In law neither would be entitled to any remuneration.

(4) In the nature of the relationship between Mr Lee and his client, the doctrine of undue influence and the absence of any proper written material must lead to the conclusion that Mr Lee's withdrawal from these matters cannot be legally justified as the basis for a claim in quantum meruit. He gave up the files not in his client's interest but his own self interest. When he could not carry on, he should have given up the briefs, if necessary with the leave of the court, if he could not get the client's consent to withdraw. What actually happened was that Mr Chang was pressured into acquiescing in Miss Goh as Mr Lee's successor.

(5) The onus to show that Miss Goh had legal justification to refuse to act further fell squarely upon the solicitor and she had not satisfied the court that she had good reasons to withdraw.

(6) If a solicitor discharges himself for just cause and there is an order permitting him to withdraw under O 64 r 5 of the Rules of the High Court 1980, the court can give directions for taxation of his costs for work done. But if he withdraws unilaterally without justification, it must follow from first principles that quantum meruit has no application.

(7) A very substantial part of Miss Goh's bills related to work done not by her but by Mr Lee. Even though she specifically disclaimed that she was acting as the agent of Lee & Cheah, she was asking for moneys to be paid to her which could only be claimed by Lee & Cheah.

(8) It followed from all this that Miss Goh's claim for costs and disbursements either for herself or on behalf of Lee & Cheah (who were no longer in existence in January 1988) must fail in toto.

[*Editorial Note*: The defendants have appealed to the Supreme Court vide Civil Appeal No 02-282 of 1989.]

Cases referred to

1 *Re Paine* (1912) 28 TLR 201 (folld)
2 *Griffiths* v *Evans* [1953] 2 All ER 1364 (folld)
3 *Re Becket*; *Purnell* v *Paine* [1918] 2 Ch 72 (folld)
4 *Wild* v *Simpson* [1919] 2 KB 544 (folld)

Legislation referred to

Legal Profession Act 1976 ss 116, 120, 121, 124, 126
Rules of the High Court 1980 O 64 r 5

Ong Chee Yong for the plaintiffs.
Roseline Lim Thye Hon (*Miss*) for the defendants.

Cur Adv Vult

Shankar J: Irene Goh practises law in Johore Bahru under the style of Goh & Associates ('Goh'). She discharged herself as the solicitor for Stephen Chang Holdings Sdn Bhd ('the company'). Then she sent the company bills for costs and disbursements for over $21,000. The company refused to pay. It now seeks an order of this court to declare that it is under no legal liability to do so.

The story begins in 1987. Stephen Chang ('Chang') is the controlling shareholder of the company. He instructed Mr Lee Bian Tian ('Lee'), the sole proprietor of Lee & Cheah, to act for him and his company in legal disputes in which they were involved. There were three civil suits in this High Court (Nos 22-1562 of 1986, 22-92 of 1987 and 22-163 of 1987), one petition for a company winding up (No 42-99 of 1987) and a suit in the Johore Bahru magistrate's court (No B433 of 1985).

By about September 1987, Lee had already committed himself to stop practising law in Johore Bahru by the end of the year. He had obtained a position in Singapore. So he had to wind down his law practice preparatory to the cessation. This meant transferring his responsibilities to others who were prepared to accept his on-going files.

In CS 22-92 of 1987, Chang had paid $2,000 towards account. This suit concerned a power struggle in a company called Multisan Orchids Sdn Bhd ('Multisan') in which Chang, his wife and the company were plaintiffs. In the matter of the petition to wind up Multisan, the company had paid $3,000 towards account. The other High Court civil suits were concerned with common questions of fact relating to Multisan. The magistrate's court action was an unrelated matter.

Chang was evidently not prepared to let Lee go. The names of alternative solicitors whom Lee proposed did not seem to appeal to him. Nor did he seem keen to appoint anyone himself. So Lee decided to precipitate matters. On 16 October 1987, he wrote to Chang (ABD 26). In his letter he said that the magistrate's court matter which was fixed for hearing on 20 October 1987 had been passed 'to our associates, namely, M/s Goh & M/s TH Lim & Co'. The letter goes on to state:

> Our associates will take over this matter. We also propose to pass over your other pending matters to our associates aforesaid. If we do not hear from you within 48 hours of receipt hereof, we will proceed to do so.

What exactly is meant by 'associates' has not been clarified by Lee or Irene Goh in this trial. They were two separate lawyers practising in Johore Bahru and the only association that I have been able to discern is that they were well disposed to each other.

What happened after this is a matter of serious contention between Chang on the one side and Lee and Goh on the other. Chang says he was very unhappy with this turn of events. He claims that Lee put the gun to his head and pressured him into accepting Goh's services for the continuation of his matters. He agreed only on condition that Lee would continue to be responsible for the conduct of all the matters and would oversee the actions of Goh. This, Chang says, Lee agreed to do. Chang is adamant he did not ever meet Irene Goh until January 1988 and then only on the basis that she would act in accordance with Lee's directions.

After speaking to Chang, Lee wrote on 22 October 1987 that all pending files would be handed over to Irene Goh when she returned on or before 1 November 1987. On 9 November 1987, there was a hearing of the winding-up petition. Lee and Chang met in court and Lee followed up with a letter on 10 November 1987 to say that all the five files in the pending matters had been handed to Irene Goh the previous day. Apart from stating that the files were handed over, there is no mention in any letter of Lee to his clients as to the terms on which the hand-over had taken place. Besides Chang and his wife and the company, professional responsibilities were also owed to Dato Haji Elias bin Udin, one of the plaintiffs in Johore Bahru High Court Civil Suit No 22-163 of 1987.

Goh filed notices of change of solicitors in all the pending matters on 3 December 1987. But again there is no letter from Goh or any other document in which Irene Goh communicated the terms on which she was taking over.

In her evidence, Irene Goh says she took over subject to the usual terms that she would protect Lee's lien for his costs and disbursements. She also says that if it had been conveyed to her at any time that she was to handle the pending matters on behalf of Lee & Cheah, she would not have agreed to act because it would have been improper for Lee & Cheah, having ceased practice, to act through her. In other words, she claimed she was acting independently and in her own right.

In January 1987, Chang, his wife and the company had obtained an injunction against Multisan and some of its other shareholders. The injunction had not been complied with. So in January 1988, committal proceedings were initiated. Chang was presented with an affidavit to be affirmed. This was in Civil Suit 22-92 of 1987. The winding-up petition was due to be heard on the 9 February 1988. The magistrate's court case was fixed for disposal on 13 February 1988. At or about the time the affidavit had to be affirmed, Chang and Irene Goh met. She asked for $2,000. Chang gave her a post-dated cheque because he wanted to confirm with Lee. She says she wanted it as payment towards account of costs. The cheque is dated 13 January 1988. Both agree it was post-dated.

Something obviously went very wrong between the two about this time. On 19 January 1988, Goh sent an AR Registered letter to the company. In it Goh in effect

said that Chang had indicated he had no confidence in their competence and therefore she was discharging herself. Goh asked that other more competent solicitors be engaged to take over. The letter continues:

> Our instructions from Lee & Cheah are not to release the files to you or your new solicitors until all costs and disbursements have been settled. As we have discharged ourselves, we will not be attending the winding-up hearing on 9 February 1988. Kindly nominate your new solicitors to appear. We have filed in the application for committal proceedings for you and a date will be fixed by the court. We will prepare and send to you the bills for all the above matters in due course.

On receipt of this letter, Chang stopped payment of the cheque and went to see Mrs PH Ong. She had been an assistant in Lee & Cheah in early 1987. She had left that firm by September that year. The relations between her and Lee were strained. She did not want to act. She took him to Teh Poh Teik of Abdul Raman Saad & Associates. He was prepared to act and so wrote to Goh on 22 January 1988. Goh wrote back on 29 January 1988 to say they had no objections to the take-over but bills in the matters outstanding totalling $21,078.55 were enclosed. The second paragraph of this letter reads:

> We forward our work done to date which come up to a total of $21,078.55 inclusive of disbursements. We have been instructed by Lee & Cheah to whom the above costs and disbursements are due not to release the relevant papers until your clients pay to us the sum of $7,000 and you give an undertaking to protect our lien on costs to the balance of $14,078.55.

As Goh were the solicitors on record, Teh Poh Teik asked that at least the papers in the winding-up petition and the magistrate's court matter be released to permit them to appear whilst instructions were obtained on the costs demanded. But Goh refused. On 5 February 1988, they replied:

> Our strict instructions from Lee & Cheah are not to release our files until the amount stated in our letter of 29 January 1988 has been paid. We are not in the position to act for them in the above matters for reasons set out in our letter to Mr Stephen Chang Chin Choi. We will be discharging ourselves in court on 9 February 1988 and at the most will be prepared to take another date for you to appear. Kindly advise your client of the above.

The costs demanded were not paid. The papers were not handed over. Chang went to Ong & Ong and instructed them to settle at best with the other parties to the pending litigation. Mr Ho Thian Cheh was acting for them. These negotiations resulted in a written agreement dated 19 March 1988 whereby, for a cash settlement between the company and Multico Orchids (S) Pte Ltd (the other substantial shareholder in Multisan), all the pending litigation was discontinued.

Some correspondence then followed about Goh's outstanding bills. The company declined liability to pay and in each matter filed an originating summons for a declaration that Goh were not entitled to any costs, and for consequential orders. The letter of 29 January 1988 is headed by all five matters. The bills presented by Goh are only in respect of civil suits 1562 of 1986, 92 of 1987, and Companies Winding-up 99 of 1987. The agreed bundle contains bills made up in readiness for taxation in the aforesaid three matters only. The present originating summons is directly related to the bill in relation to the winding up alone. The Originating Summons Nos 31-830-88 and 31-842-88 deal with the other two. On 4 April 1989, I made a consent order that the cause papers in this application be treated as pleadings and the matter to proceed by way of a trial in open court. The parties also agreed that this will be treated as a test action and the other two applications will be bound by the result in this action.

I have earlier observed that neither Lee nor Goh prepared any document to which Chang, his wife, or the company were parties in which the terms of this take-over were set out.

In *Cordery on Solicitors* (7th Ed) at p 51, there appears the following passage:

> If the circumstances are urgent a solicitor may commence proceedings on oral instructions from his client but he should obtain a written authority as soon as possible thereafter. If however there is no evidence of the retainer except the statement of the solicitor which is contradicted by the client, the court will treat the solicitor as having acted without authority. The onus of proof is on the solicitor, and more weight will be given to the affidavit of the client than to that of the solicitor.

The cases are *Re Paine*[1] and *Griffiths* v *Evans*[2] at p 1369. In the absence of written evidence of the actual terms on which this take-over was staged, I am compelled by authority to give greater regard to the testimony of Chang than to that of Lee or Irene Goh on this aspect of the matter. I hold therefore that Chang must have been given some assurances that the guiding hand of the only solicitor whom he trusted and had already paid $5,000 to, would prevail in the safe conduct of these pending matters towards their successful resolution. The repeated assertions of Goh in their letters to the plaintiffs that they were acting on the instructions of Lee and Cheah give support to Chang's claims on this ground.

To reinforce their contention that Chang had agreed to engage Goh as his solicitor, both Lee and Irene Goh testified that Chang had been to see Irene Goh shortly after her return from leave in November 1987. From Lee's letter dated 10 November 1987, it must follow that if Chang saw Irene Goh at all, it must have been after that date. In other words all the files had already gone to Goh *before* Chang ever met her. Lee and Goh both say that Chang expressed satisfaction with Miss Goh particularly as both Chang and Irene Goh were from Kuching in Sarawak. But Chang's evidence is a total denial of any such incident. He says he never met Irene Goh till

January 1988 and there is no question of his having come from the same town as Miss Goh. In a conflict of this kind one looks for written evidence. Irene Goh claimed there were several meetings between her and Chang even before the affidavit was executed. The itemized bills submitted by Miss Goh are very detailed, but there is a marked absence of any attendances by her on Chang in November or December 1987 or at all. In other words her claim that she repeatedly attended on Chang in respect of these matters is not corroborated by her own itemized bills.

Both Chang and Lee say that the understanding was that the matters would be billed when the work was completed. In other words each of the matters was an entire contract, and it was only on completion of the business that the solicitor was entitled to be remunerated. (See 44 *Halsbury's Laws of England* (4th Ed) para 97 p 68.)

Whatever may be Chang's impression of the terms of Lee's withdrawal, Lee contends that Goh was not his agent, but an independent solicitor to the client. But Goh's retainer in such a case must come from the client, not from Lee, and consequently it would appear, in the light of my earlier finding, that she was not retained by the client but by Lee, and it is to him that she must look for her remuneration, if she is entitled to any at all. (See *Re Becket; Purnell* v *Paine*.[3]) In any case, the fact remains that these matters were never finalized either by Lee or by Goh, each for reasons of their own. In law neither would be entitled to any remuneration: see *Wild* v *Simpson*[4] at p 566.

Even so I must go on to consider whether remuneration can be recovered on a quantum meruit. This brings me to the crux of this case. Did either of them cease to act with legal justification? In the nature of the relationship between Lee and his client, the doctrine of undue influence and the absence of any proper written material must lead to the conclusion that Lee's withdrawal from these matters cannot be legally justified as the basis for a claim in quantum meruit. He gave up the files not in his client's interest but his own self interest. When he could not carry on he should have given up the briefs, if necessary with the leave of the court, if he could not get the client's consent to withdraw. His firm was solicitor on record. The matter is specifically provided for by O 64 r 5 of the Rules of the High Court 1980. Chang's consent, if it can be called that, to Goh's acting was not a full, legal or informed consent. I hold that notwithstanding attempts to dress up in Lee's letters, what actually happened was that Chang was pressured into acquiescing in Goh as Lee's successor.

Having got herself on record, why did Irene Goh discharge herself? This aspect of the case is very contentious. Chang's evidence is that Goh made improper suggestions as to how his interests may be secured. So he queried her competence. Chang has been faulted for failing to give advance notice of this accusation to Goh. In the circumstances of this case, I do not consider this omission crucial to the resolution of Chang's credibility. Obviously a drastic deterioration had taken place in the relationship and he alone has come out with a serious reason why he queried Goh's competence. Nor did I consider that the statement, that he had paid all costs and disbursements in Teh Poh Teik's letter of 22 January 1988, make him a witness unworthy of belief. It was not for him to prove that Goh had good reasons to discharge herself. In all the circumstances of this case, the reasons he gave for not putting his allegations in his first affidavit, and for the contents of the letter aforesaid are not inherently incredible. Goh's version is that Chang was an impossible client for her to deal with because he worried her incessantly and harassed her about his case. Unfortunately these sweeping allegations were not supported with any concrete instances. Not one. Even if they were true, the remedy for over-anxious clients who waste lawyers' time with unnecessary calls is to bill them in limine for each attendance. But there are other problems with her credibility. What did she do between 3 December 1987 and the date on which she discharged herself? Inter alia, she claims that she negotiated with Mr Ho Thian Cheh for a settlement. But Ho Thian Cheh was called and testified on oath that no real discussion took place between them on any settlement. He is a completely independent witness and I accept him as a witness of truth. There was also a sharp conflict of evidence between Irene Goh and Lee himself on why she collected $2,000 from Chang in January 1988. Lee said he asked Goh to collect it and Goh denied this.

In a situation of this sort, the onus to show that she had legal justification to refuse to act further falls squarely upon the solicitor. I regret to say that she had not satisfied me that she had good reasons to withdraw.

This is a convenient point to refer to O 64 r 5(1) of the Rules of the High Court 1980. Under that rule, when Goh unilaterally ceased to act for the company, it was open to her to apply to the court for an order declaring that she had ceased to be the solicitor for the company. Order 64 r 5(2) provides that the application must be in the prescribed form and supported by an affidavit stating the grounds of the application. Miss Goh, in her evidence, said that she did not comply with this rule because this was a special case. I regret that I am unable to appreciate this. Her omission must, in my view, militate against her credibility.

All the matters which Goh purported to take over were contentious business. Costs for such business are the subject of s 116 et seq of the Legal Profession Act 1976. Since there was no agreement whatsoever in writing between the parties as to any costs payable, Goh's claim to costs would have had to be pursued, inter alia, under the provisions of ss 121, 124 and 126 of the Legal Profession Act 1976 ('the Act'). Two points emerge quite clearly

from the Act; first, that a solicitor cannot sue for his costs without the leave of the court, and second, that where a liability to pay costs is established, the quantum of such costs can be regulated by taxation.

I have not had the benefit of arguments by counsel on the implications of these provisions on the present case. However, they do not appear to make any provision for a situation where the solicitor has discharged himself. If he does so for just cause and there is an order permitting him to withdraw under O 64 r 5, it seems to me that the court can give directions for taxation of his costs for work done. (See s 120(2) of the Act.) But if he withdraws unilaterally without justification, it must follow from first principles that quantum meruit has no application.

Finally it has to be observed that a very substantial part of Goh's bills relates to work done *not* by her but by Lee. I have not had any helpful assistance from counsel on the point, but it seems to me that a solicitor's lien in relation to client's files is a possessory right. Under it, the solicitor is entitled to detain the papers until his bill is paid. That is all. (See 44 *Halsbury's Laws of England* (4th Ed) para 229.) In the present case, when Goh rendered her bills on 29 January 1988, each bill stipulated that all cheques are to be crossed 'account payee only' and payable to Goh & Associates. In other words, even though Irene Goh specifically disclaimed that she was acting as the agent of Lee & Cheah, she was asking for moneys to be paid to her which could only be claimed by Lee & Cheah. There was no question of any assignment in this case or a novation whereby the liabilities, if any, of Chang, his wife and the company to Lee for costs were automatically transferred to Goh. Her bills were therefore wholly misconceived.

It follows from all this that Goh's claim for costs and disbursements either for herself, or on behalf of Lee & Cheah (who were no longer in existence in January 1988), must fail in toto. I do therefore now declare that the plaintiff is under no legal liability to pay any of the costs claimed by Goh & Associates in this action and make a further order in terms of prayers nos 4 and 7 of the plaintiff's originating summons herein. The plaintiffs' costs of and incidental to this originating summons shall be taxed and paid by the defendant to the plaintiff. Since this is a test action, it follows that there will be similar orders in the Originating Summons Nos 31-830 of 1988 and 31-842 of 1988.

Order accordingly.

Solicitors: *Ong & Ong*; *TH Lim & Co.*

Reported by *PS Ranjan*

Oversea-Chinese Banking Corp Ltd v Konsortium Utama Sdn Bhd

HIGH COURT (IPOH) - ORIGINATING MOTION NO 25-4-89
ABDUL MALEK J
30 JUNE 1989

Land Law - Caveat - Application by chargees for removal of caveat - Interest of caveator mere personal claim - Whether chargee aggrieved by lodgment of - National Land Code 1965, s 340(1) & (2)

The applicants had applied for an order that the private caveat lodged by the respondents in the Registry of Titles on the parcel of land in question be removed by the Registrar of Titles by cancellation. The applicants had registered themselves as chargees of the land in October 1983 while the private caveat was lodged in September 1987. The respondents were contractors for a company and had undertaken to perform construction works. They were not paid and an action was filed against the company. Judgment in default was obtained but was later set aside. Further, in 1986, the respondents had sold three sublots of the land to a third party. The respondents claim that only a sum of $60,000 of the sale price of $235,000 was paid. As a result of the judgment (which was subsequently set aside) and the alleged unpaid balance of the purchase price, the caveat was lodged. The respondents contended that the applicants, as chargees, were secured and the caveat would not in any way alter the applicants' position or prejudice their interests. Further, the respondents were willing to remove the caveat once they are paid the sums owed to them. The only question before the court was whether the applicants, as chargees, had been aggrieved by the caveat lodged.

Held, allowing the chargees' application:
Section 340(1) and (2) of the National Land Code 1965 is abundantly clear. The charge was registered prior to the sale and purchase agreement between the respondents and BLC. Being the chargee with an indefeasible title and in absence of any fraud, misrepresentation or forgery, the applicants had been aggrieved by the lodgment of the caveat by the respondent who have yet to obtain judgment against BLC. What the respondents had was a mere personal right that is yet to be converted into a judgment.

Cases referred to
1 *Eng Mee Yong & Ors* v *Letchumanan* [1979] 2 MLJ 212 (folld)
2 *Registrar of Titles, Johore v Temenggong Securities Ltd* [1976] 2 MLJ 44 (folld)

Legislation referred to
National Land Code 1965 s 340(1), (2)

Arthur Yeong Chong Sen for the applicants.
Tan Kok Guan for the respondents.

Cur Adv Vult

Abdul Malek J: The applicants had, by way of notice of motion filed on 11 January 1989, on a certificate of urgency, applied for an order that the private caveat lodged by the above-named respondents in the Registry of Titles, Ipoh on the whole of the parcel or piece of land held under HS(D) Ka 3407/83 PT 46646 mukim Hulu Kinta, district of Kinta (hereinafter 'the said land') vide caveat